

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES CURTIS KERN, BX3065,

Plaintiff,

v.

DR. SAMIT PATEL,

Defendant(s).

Case No. [25-cv-01881-CRB](#) (PR)

ORDER OF DISMISSAL

Plaintiff, a prisoner at Pelican Bay State Prison (PBSP), has filed a pro se complaint under 42 U.S.C. § 1983 alleging that doctors at PBSP have denied him adequate treatment for a painful lesion/mass in his forearm by cancelling and/or interfering with previously scheduled pre-op and specialist appointments to remove the lesion/mass and instead are treating him only with NSAIDs to which he is allergic. Plaintiff raised the same allegations in a prior prisoner complaint, which was ordered served on several named doctor defendants at PBSP. See Kern v. Goller, No. 24-cv-7094-CRB (PR) (N.D. Cal. Jan. 16, 2025) (order of service).

A prisoner complaint that merely repeats pending or previously litigated claims may be considered abusive and dismissed under the authority of 28 U.S.C. § 1915A. Cf. Cato v. United States, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (citing Bailey v. Johnson, 846 F.2d 1019, 1021 (5th Cir. 1988)) (duplicative in forma pauperis complaint may be considered abusive and dismissed under 28 U.S.C. § 1915). Because plaintiff raised and is litigating the same allegations and claims raised herein in Kern v. Goller, No. 24-cv-7094-CRB (PR), the instant complaint is deemed duplicative and abusive under § 1915A. That plaintiff names a new doctor defendant in this later-filed action does not compel a different result. See Bailey, 846 F.2d at 1021 (complaint repeating same allegations asserted in earlier case, even if now filed against new defendants, is subject to dismissal as duplicative and abusive).

1 For the foregoing reasons, plaintiff's complaint against Dr. Patel is DISMISSED as
2 duplicative and abusive under the authority of 28 U.S.C. § 1915A(b). See also Kern v. Patel, No.
3 24-cv-9353-CRB (PR) (N.D. Cal. Jan. 17, 2025) (order dismissing prior case against Dr. Patel as
4 duplicative and abusive).

5 The clerk is directed to close the case and terminate all pending motions as moot.

6 **IT IS SO ORDERED.**

7 Dated: March 20, 2025



CHARLES R. BREYER
United States District Judge